

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIAM M. OBERPRILLER,
Plaintiff,

No. C 10-3782 CW (PR)
ORDER OF DISMISSAL

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION,
Defendant.

INTRODUCTION

Plaintiff, a state prisoner, has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983 alleging that Defendant violated his rights under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12131 et seq., and § 504¹ of the Rehabilitation Act, 29 U.S.C. § 701 et seq.

His motion for leave to proceed in forma pauperis has been granted.

Venue is proper because the events giving rise to the claim are alleged to have occurred at the Correctional Training Facility (CTF), which is located in this judicial district. See 28 U.S.C. § 1391(b).

In the body of his complaint, Plaintiff names the following Defendants: CTF Correctional Sergeant S. Borgman and CTF Correctional Officer P. Amaro, as well as the California Department

¹ In his complaint, Plaintiff alleges that Defendant violated his rights under § 505 of the Rehabilitation Act. Because § 505 governs remedies and attorney's fees, the Court assumes that Plaintiff intended to raise a claim under § 504, which governs the rights of those with disabilities.

1 of Corrections and Rehabilitation (CDCR), although he includes only
2 the CDCR in the caption. He seeks monetary damages.

3 DISCUSSION

4 I. Standard of Review

5 A federal court must conduct a preliminary screening in any
6 case in which a prisoner seeks redress from a governmental entity
7 or officer or employee of a governmental entity. 28 U.S.C.
8 § 1915A(a). In its review, the court must identify any cognizable
9 claims and dismiss any claims that are frivolous, malicious, fail
10 to state a claim upon which relief may be granted or seek monetary
11 relief from a defendant who is immune from such relief. Id.
12 § 1915A(b)(1), (2). Pro se pleadings must be liberally construed.
13 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
14 1988).

15 To state a claim under 42 U.S.C. § 1983, a plaintiff must
16 allege two essential elements: (1) that a right secured by the
17 Constitution or laws of the United States was violated, and
18 (2) that the alleged violation was committed by a person acting
19 under the color of state law. West v. Atkins, 487 U.S. 42, 48
20 (1988).

21 II. Factual Background

22 In 1977, Plaintiff lost his left leg in a "motorcycle
23 collision." (Compl. at 2.) Because Plaintiff has only one leg, he
24 is "normally transported" by CTF transportation staff in an ADA-
25 compliant transportation vehicle when taken off-site. (Id. at 3.)

26 In approximately November 2009, Plaintiff was examined by a
27 CTF physician, who determined that Plaintiff "required an immediate
28 liver biopsy." (Id. at 3.) Plaintiff did not receive a liver

1 biopsy.

2 In approximately January 2010, Plaintiff was again examined by
3 a CTF physician. The physician also "determined a liver biopsy was
4 needed," and reordered Plaintiff's liver biopsy. (Id.)

5 On March 16, 2010 at 3:30 a.m., Plaintiff was awakened by a
6 CTF Correctional Officer, who directed him to report to the CTF
7 medical department at 4:00 a.m. When Plaintiff reported to the CTF
8 medical department, he was informed that he would be transported
9 that morning to Natividad Medical Center to receive his liver
10 biopsy. (Id.) Defendant Borgman escorted Plaintiff from the CTF
11 medical department to the East-Gate area for "processing, i.e.
12 strip search, clothing change etc." (Id.)

13 When they reached the East-Gate area, Plaintiff explained to
14 Defendant Borgman that "due to his handicap he required the [ADA]-
15 compliant transportation vehicle" (Id.) Defendant Borgman
16 informed Plaintiff that the ADA-compliant transportation vehicle
17 "was already being utilized by another transportation team," and
18 that Plaintiff would be "transported to his liver biopsy
19 appointment in transportation van # 187." (Id.) He added that
20 Plaintiff "could refuse treatment if he wished." (Id.) Plaintiff
21 replied that "he feared he may be seriously ill, and really needed
22 this liver biopsy completed." (Id.) Defendants Borgman and Amaro
23 "instructed the Plaintiff to use his crutches to get into the
24 transportation vehicle." (Id. at 4.) At this moment, Plaintiff
25 "realized:"

26 (1) he was not wearing his prosthetic [sic] leg, (2) CTF
27 Transportation Sergeant and his staff were untrained in
28 the necessary technique(s) to lift an amputee correctly,
(3) the scheduled liver biopsy was urgently needed,
(4) no ADA vehicle was going to be summoned to transport

1 him, [and] (5) he would have to crawl up the stairs to
2 get into the non-ADA compliant vehicle."

3 (Id.) Defendant Borgman and "numerous other correctional officers
4 stood by and watched" as Plaintiff "crawl[ed] into the
5 transportation vehicle." (Id.)

6 Plaintiff was then transported to Natividad Medical Center.
7 When he arrived there, he was "asked by untrained CDCR staff,"
8 Correctional Officers A. Peguero and F. Lopez, whether he "wanted
9 to be lifted out of the van." (Id.) Plaintiff, realizing that
10 they were "untrained in the correct lifting techniques," refused
11 their assistance and "crawled out of the transportation vehicle."
12 (Id.)

13 After receiving his liver biopsy, Plaintiff was "escorted back
14 to the same transportation vehicle" by Defendant Amaro, as well as
15 Correctional Officers T. Testerman and M. Orozco. The officers
16 "again watched the Plaintiff crawl into the transportation
17 vehicle." (Id.) When Plaintiff arrived at CTF, he "crawled out of
18 the transportation vehicle," and was escorted back to the CTF
19 medical department.

20 Licensed Vocational Nurse (LVN) Stout examined Plaintiff and
21 "completed a CDCR 7219 form (Medical Report of Injury or Unusual
22 Occurrence)." (Id.) LVN Stout "documented the Plaintiff's
23 injuries on the CDCR 7219 as: 'Scraped R knee when crawling into
24 transport van.'" (Id.)

25 III. Disability Discrimination Claim

26 Title II of the ADA, 42 U.S.C. § 12131 et seq., and § 504 of
27 the Rehabilitation Act, as amended and codified in 29 U.S.C. § 701
28 et seq., prohibit discrimination on the basis of a disability in

1 the programs, services or activities of a public entity. The term
2 "public entity" encompasses state correctional facilities. See
3 Pennsylvania Dep't of Corrections v. Yeskey, 524 U.S. 206, 210
4 (1998). The "ADA's broad language brings within its scope anything
5 a public entity does," which "includes programs or services
6 provided at jails, prisons, and any other custodial or correctional
7 institution." Lee v. City of Los Angeles, 250 F.3d 668, 691 (9th
8 Cir. 2001) (internal quotation marks omitted).

9 Title II of the ADA has been construed to provide a private
10 cause of action, and complainants may elect to proceed with a civil
11 suit at any time. See Noland v. Wheatley, 835 F. Supp. 476, 484
12 (N.D. Ind. 1993); Petersen v. Univ. of Wisconsin Bd. of Regents,
13 818 F. Supp. 1276, 1279-80 (W.D. Wis. 1993). However, where the
14 ADA or Rehabilitation Act complaint concerns prison conditions,
15 exhaustion is required under the exhaustion provision of the Prison
16 Litigation Reform Act, 42 U.S.C. § 1997e(a). O'Guinn v. Lovelock
17 Correctional Center, 502 F.3d 1056, 1061 (9th Cir. 2007).

18 The elements of a cause of action under Title II of the ADA
19 are (1) the plaintiff is an individual with a disability; (2) the
20 plaintiff is otherwise qualified to participate in or receive the
21 benefit of some public entity's services, programs, or activities;
22 (3) the plaintiff was either excluded from participation in or
23 denied the benefits of the public entity's services, programs or
24 activities, or was otherwise discriminated against by the public
25 entity; and (4) such exclusion, denial of benefits, or
26 discrimination was by reason of the plaintiff's disability.
27 Thompson v. Davis, 295 F.3d 890, 895 (9th Cir. 2002). A cause of
28 action under § 504 of the Rehabilitation Act essentially parallels

1 an ADA cause of action. See Olmstead v. Zimring, 527 U.S. 581, 590
2 (1999); Duvall v. County of Kitsap, 260 F.3d 1124, 1135 (9th Cir.
3 2001).

4 Federal regulations require a public entity to "make
5 reasonable modifications in policies, practices, or procedures when
6 the modifications are necessary to avoid discrimination on the
7 basis of disability, unless the public entity can demonstrate that
8 making the modifications would fundamentally alter the nature of
9 the service, program, or activity." 28 C.F.R. § 35.130(b)(7).
10 However, in the prison context, both Title II of the ADA and § 504
11 of the Rehabilitation Act must be applied with consideration to
12 legitimate penological interests. See Armstrong v. Wilson, 942 F.
13 Supp. 1252, 1259 (N.D. Cal. 1996) (citing Gates v. Rowland, 39 F.3d
14 1439, 1447 (9th Cir. 1994)); Bullock v. Gomez, 929 F. Supp. 1299,
15 1303 (C.D. Cal. 1996). In other words, "to prevail on a claim that
16 their statutory rights have been violated, inmates must show that
17 the challenged prison policy or regulation is unreasonable."
18 Pierce v. County of Orange, 526 F.3d 1190, 1217 (9th Cir. 2008)
19 (citing Gates, 39 F.3d at 1447).

20 In the present action, Plaintiff alleges he is an individual
21 with a disability within the meaning of Title II of the ADA and
22 § 504 of the Rehabilitation Act. (Compl. at 4.) He further
23 alleges that the failure of CDCR to "reasonably modify its
24 prisoner/inmate medical transportation [sic] practice to accommodate
25 Plaintiff, a [sic] otherwise qualified individual, based solely on
26 the Plaintiff's disability constituted a breach of its duty" under
27 Title II of the ADA and § 504 of the Rehabilitation Act. (Id. at
28 5.) Plaintiff also sues in their individual capacity both

1 Defendants Borgman and Amaro, who were "responsible for
2 [Plaintiff's] medical transport." (Id. at 1-2.) Finally,
3 Plaintiff claims that as a direct result of CDCR's failure to
4 provide him with an ADA-compliant transportation vehicle, he was
5 "forced to endure the humiliation of discrimination by not being
6 provided a[n] ADA medical transport van, thereby burdening the
7 Plaintiff different from and greater than a burden on non-disabled
8 prisoners/inmates." (Id. at 5.)

9 A. Proper Defendant

10 Plaintiff cannot bring an action under Title II of the ADA or
11 § 504 of the Rehabilitation Act against individual officers,
12 because the proper Defendant in such actions is the public entity
13 responsible for the alleged discrimination. Nor can he bring a
14 § 1983 action against Defendants in their individual capacities
15 based on such allegedly discriminatory conduct. See Vinson v.
16 Thomas, 288 F.3d 1145, 1156 (9th Cir. 2002) ("[A] plaintiff cannot
17 bring an action under 42 U.S.C. § 1983 against a State official in
18 her individual capacity to vindicate rights created by Title II of
19 the ADA or § 504 of the Rehabilitation Act."). Thus, the only
20 proper Defendant in this action is CDCR, the public entity which
21 allegedly denied Plaintiff equal benefits of its services.

22 In the Ninth Circuit, state agencies are not entitled to
23 Eleventh Amendment sovereign immunity from suit under Title II of
24 the ADA. Phiffer v. Columbia River Correctional Institute, 384
25 F.3d 791, 792 (9th Cir. 2004) (per curiam). As to the
26 Rehabilitation Act, the Ninth Circuit has held that "[b]ecause
27 California accepts federal funds under the Rehabilitation Act,
28 California has waived any immunity under the Eleventh Amendment" as

1 to that Act's anti-discrimination provisions. See Clark v. State
2 of California, 123 F.3d 1267, 1271 (9th Cir. 1997).

3 Therefore, Plaintiff may state a claim of disability
4 discrimination against CDCR, and CDCR only.

5 B. Analysis of Disability Claim

6 The Court assumes without deciding that Plaintiff has met the
7 first element of a cause of action under Title II of the ADA
8 because the loss of his left leg constitutes "a physical or mental
9 impairment" which "substantially limits one or more of the major
10 life activities" 42 U.S.C. § 12102(1). As such, Plaintiff
11 is an individual with a qualifying disability under Title II of the
12 ADA and § 504 of the Rehabilitation Act. Second, Plaintiff is
13 qualified to "receive the benefit of the defendant [CDCR]'s
14 Disabled Prisoner Transport program and/or vehicles" due to his
15 disability. (Compl. at 5.) Third, the record shows that Plaintiff
16 was denied the use of this "benefit" because an ADA-compliant
17 transportation vehicle was not available when he was scheduled to
18 be transported to Natividad Medical Center to receive his liver
19 biopsy. However, Plaintiff has not met the fourth element because
20 he cannot show that "such exclusion, denial of benefits, or
21 discrimination was by reason of [his] disability." Instead, the
22 record shows that Plaintiff is "normally transported" in a ADA-
23 compliant transportation vehicle when taken off-site. (Id. at 3.)
24 However, on March 16, 2010, the ADA-compliant transportation
25 vehicle was unavailable because it was being used by another
26 transportation team. (Id.) Plaintiff was given the option not to
27 be taken to the hospital at that time because an ADA-compliant
28 transportation vehicle was not available; however, he chose to

1 proceed because he claimed his liver biopsy was "urgently needed."
2 (Id. at 4.) After Plaintiff completed his liver biopsy, he was
3 transported back to CTF in the same non-ADA-compliant
4 transportation vehicle. (Id.) The facts alleged by Plaintiff do
5 not support the assertion of a violation of his rights under Title
6 II of the ADA or § 504 of the Rehabilitation Act.

7 Accordingly, the Court finds that Plaintiff has failed to
8 state a claim upon which relief may be granted. Because amendment
9 would be futile, this action is DISMISSED with prejudice.

10 CONCLUSION

11 For the foregoing reasons, this action is DISMISSED with
12 prejudice and without leave to amend.

13 The Clerk of the Court shall enter judgment and close the
14 file.

15 IT IS SO ORDERED.

16 DATED: 9/7/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM OBERPRILLER,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS et al,

Defendant.

Case Number: CV10-03782 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 7, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

William M. Oberpriller C-80076
C.S.P. - Solano
BLD#6 250 LOW
P.O. Box 4000
Vacaville, CA 95696-4000

Dated: September 7, 2011

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk

United States District Court
For the Northern District of California